IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 550 OF 1989

Mohamed Isak Alisaheb Bhombal ... Appellant

V/s

Abbas Umar Chafekar ... Respondent

Shri S.G. Karandikar for the appellant.

Shri Prasad S. Dani for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 16TH SEPT., 2004.

P.C.:

1. This is an appeal filed by the aggrieved plaintiff whose Regular Civil Suit No. 57 of 1979 was dismissed and respondent's Appeal No. 150 of 1983 was allowed by the Additional District Judge, Alibag.

2. The facts involved in the dispute in short are -

It was the case of the plaintiffs that he was the Head Master of Primary School of Urdu Medium at village Rajewadi. He was also a Chairman and was holding the post of Honorary Secretary of Shikshan Prasarak Mandal at Rajewadi and Secretary of Habibiya Library. He

claims himself to be a person of good reputation and a hard worker in education department. The defendant is a servant of State Transport Department and is a resident of village Rajewadi. The plaintiff further contended that, during September 1978 to November, 1978 the defendant preferred different applications to the Block Development Officer of Mahad, wherein he made false and hateful contentions against the plaintiff, such as, the plaintiff frequently remains absent in the school, he did not give the school leaving certificate to Hasan Bala Kapdi in due time, he used to beat severely to the students with stick and also collects contributions from the students for purchasing newspapers and painting school building. According to the plaintiff, all these allegations are false and defamatory and thereby the defendant, according to him defame him and hence the suit came to be filed for action for libel. The defendant appeared and filed his written statement denying all the allegations made by the plaintiff and submitted that he had in fact made application dated 23.9.1978 asking the Block Development Officer only to inform him whether the plaintiff had no right to leave frequently. In short, the defendant justified his action and submitted that it was an enquiry simplicitor and was never intended to be a libellous manner.

3. The learned Trial Judge settled the issues and adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that defendant had made false and malice application to the Block Development Officer and other officers with intention to harm his reputation as Head Master. Further, it was also held to be proved that due to said behaviour of the defendant, the plaintiff had caused mental agony and, therefore, he was held entitled to the damages for Rs.2000/- from the defendant.

4. Being aggrieved by the said order, the defendant preferred the appeal in the District Court at Raigad, Alibag. The learned Addl. District Judge adjudicated the appeal on merits and came to the conclusion that the findings recorded and order passed by the Civil Judge was not tenable in law and as such appeal was allowed and suit was dismissed. Hence the second appeal.

5. At the time of admission, the learned Single Judge framed substantial question of law to the effect that - (1) whether the appellant proved that he had been libelled by the respondent and whether this entitled him to damages claimed. In my considered view, this

question raised at the time of admission, cannot be said to be the substantial question of law as contemplated under Sec.100 of the C.P.C. However, since the appeal is admitted, it would be necessary for this Court to go into the merits and adjudicate the dispute according to law.

6. On perusal of the judgment of the lower Court, the appellate Court Judge makes it clear that he has appreciated the entire evidence on record critically and correctly while coming to the conclusion that there was some substance in the justification given by the defendant while making the enquiry with the Block Development Officer and other officers with regard to the acts of the plaintiff Head Master. It appears to be an admitted fact that the Block Development Officer had enquired into all the allegations and informed the defendant vide Exh.37 of which perusal shows that the Block Development Officer had made necessary enquiry and found that the plaintiff had enjoyed leave, but it was nowhere found that the plaintiff maintained any record of his leave. According to the Block Development Officer, plaintiff, whenever required leave, had obtained necessary orders and remained absent and has come to the conclusion that plaintiff’s acts were not

malice. On this basis, the learned lower appellate Court has come to the conclusion that the record before the Court is sufficient to show that the allegations made by the defendant cannot be said to be false nor could be said to make intention to defame the plaintiff in any manner whatsoever. In other words, it appears that the defendant made enquiry simplicitor with the Block Development Officer and other officers without any malice in his mind. In view of this position, the learned appellate Court Judge appears to have concluded that the plaintiff's cause was not justified and, as such, deserves to be dismissed.

7. I am fully agree with the reasoning adopted and findings recorded by the lower appellate Court and in the result, the appeal deserves to be dismissed and stands dismissed. In view of these circumstances, there shall not be any order as to costs.

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